

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
(WESTERN DIVISION)

JOHN DUDENHOEFFER, ALIREZA  
PARTOVIPANAH, *et al.*,

Plaintiffs,

vs.

FIFTH THIRD BANCORP, *et al.*,

Defendants.

Civil Action No.: 1:08cv538

**STIPULATION REGARDING DISMISSAL OF CERTAIN INDIVIDUAL  
DEFENDANTS**

WHEREAS, on October 3, 2008, individual representative putative class actions brought separately by Plaintiffs on behalf of the Fifth Third Bancorp Profit Sharing Plan (the “Plan”) against Defendants Fifth Third Bancorp (“Fifth Third”) and other individuals as defendants were consolidated and styled as *John Dudenhoefer, et al. vs. Fifth Third Bancorp, et al.*, Civil Action No. 1:08-cv-538-SSB-TSB (S.D. Ohio) (the “Suit”);

WHEREAS, Plaintiffs’ Consolidated Complaint for violations of the Employee Retirement Income Security Act of 1974 (“ERISA”), filed on May 15, 2009 (the “Consolidated Complaint”), named, among others, Allen, Barrett, Bridgeman, Hill, Hackett, Heminger, Koch, Livingston, Meijer, Rogers, Schiff, Taft, and Traylor, as the “Outside Directors Defendants” alleging that they were fiduciaries of the Plan;

WHEREAS, counsel for the Outside Directors have represented to Plaintiffs that the Outside Directors Defendants were not ERISA fiduciaries for the Plan for purposes of the claims asserted or to be asserted in this Suit during the relevant time period;

WHEREAS, the parties to this stipulation desire to avoid lengthy and costly litigation on the question of ERISA fiduciary status of the Outside Directors Defendants and therefore executed on September 29, 2009 a Tolling Agreement for the Outside Directors Defendants (attached hereto as Exhibit A) and did not name the Outside Directors Defendants as parties in the Consolidated Class Action Complaint for Violations of the Employee Retirement Income Security Act filed on September 21, 2009;

WHEREAS, Plaintiffs have not yet had an opportunity to take full discovery regarding the Outside Directors Defendants' alleged fiduciary status;

WHEREAS, the undersigned parties wish to preserve their respective rights and defenses during discovery in the Suit,

NOW THEREFORE, the parties stipulate to the dismissal of the Outside Directors Defendants without prejudice, pursuant to the terms of the Tolling Agreement executed on September 29, 2009 (attached hereto as Exhibit A) and incorporated herein by reference.

It is so stipulated.

RESPECTFULLY SUBMITTED this 29 day of October, 2009.

**PARRY DEERING FUTSCHER  
& SPARKS, PSC**

By: /s/ Ronald R. Parry  
Ronald R. Parry  
411 Garrard Street  
Covington, Kentucky 41012-2618  
Tel: (859) 291-9000  
Fax: (859) 291-9300

**GAINEY & McKENNA**  
Thomas J. McKenna  
295 Madison Avenue, 4<sup>th</sup> Floor  
New York, NY 10017  
Tel: (212) 983-1 300  
Fax: (212) 983-0383

**VORYS, SATER, SEYMOUR AND PEASE  
LLP**

By: [Signature]  
Glenn V. Whitaker (0018169)  
Mary C. Henkel (0035963)  
Dorothea K. Langsam (0082973)  
Suite 2000, Atrium Two  
221 East Fourth Street  
P.O. Box 0236  
Cincinnati, Ohio 45201-0236  
Telephone: (513) 723-4000  
Facsimile: (513) 723-4056

*Attorneys for the Outside Directors*

Email: [tjmlaw2001@yahoo.com](mailto:tjmlaw2001@yahoo.com)

[tjmckenna@gaineyandmckenna.com](mailto:tjmckenna@gaineyandmckenna.com)


**BARROWAY TOPAZ & KESSLER, LLP**

Joseph H. Meltzer  
Edward W. Ciolko  
280 King of Prussia Road  
Radnor, PA 19087  
Tel: (610) 667-7706  
Fax: (610) 667-7056  
Email: [jmeltzer@smtk.com](mailto:jmeltzer@smtk.com)  
Email: [eciolko@smtk.com](mailto:eciolko@smtk.com)

Robert M. Smyth  
**DREW & WARD CO., LPA**  
1 W. Fourth St., Suite 2400  
Cincinnati, OH 45202  
Tel: (513) 621-8210  
Fax: (513) 621-5444

*Counsel for Plaintiffs*

SO ORDERED:

  
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Honorable Sandra S. Beckwith  
United States District Judge